

THE CONDITIONS OF THE JUDICIAL AND ADMINISTRATIVE PROTECTION OF COPYRIGHT IN CHINA

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This Paper is divided into two parts: The first part is about the legislation and judicial protection of copyright in China; the second part is about the administrative protection of copyright and its effects in China.

LEGISLATIVE AND JUDICIAL PROTECTION OF COPYRIGHT IN CHINA

China is an ancient civilization with a publishing history that dates back more than a thousand years. As the publishing industry developed in China, the publishers of the Song Dynasty first became aware of copyright protection. For example, when a certain Mr. Cheng of Meishan, Sichuan, printed the book *Stories of the East Capital*, it was printed on the “copyright page” of those days “Printed by Cheng of Meishan, who applied protection from the superior, any reproduction is prohibited.” However, on the whole, the setting up of a protection system of copyright in China has been relatively late. In the decades when a planned economy was practiced in China, copyright protection did not receive the proper attention it ought to have. As a result, contemporary copyright consciousness has been comparatively weak among publishing houses as well as the masses of the people.

Along with certain other open reforms and policies, copyright protection has gradually been implemented in China. As the realization of the importance of copyright protection continues to deepen, legislation on copyright issues has accelerated, and a fundamental legal system of copyright protection has been set up and put into force.

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A. China's Basic Stand and Attitude Regarding Copyright Protection

In June 1994, the Chinese government published a White Booklet titled *The Conditions of the Protection of the Intellectual Property Rights in China*. In the Booklet, it was pointed out that "the Chinese government holds that the protective system of the intellectual property rights plays an important role in the promotion of scientific and technological advancement, the ability of the culture to flourish and creates economic prosperity. It not only is a necessary system ensuring the normal functioning of the socialist market economy, but also stays one of the basic conditions on which international social communication and cooperation in science, technology, economy and culture are developed. The Chinese government regards the protection of intellectual property rights as an indispensable part of the reform and open policy and the socialist legal construction."

B. Legislation of Copyright in China and the Joining of International Conventions

In the early eighties, China had promulgated Provincial Regulations of Copyright Protection on Books and Magazines (6-15-1984, (84) 849). The legislation of copyright protection in China has strengthened ever since. On September 7, 1990, the Fifteenth Conference of the Standing Committee of the Seventh National People's Congress passed The Copyright Law of the People's Republic of China, which was put into force on June 1, 1991. Afterwards, the Chinese government promulgated a series of laws and regulations, among which are The Enforcement Regulations of Copyright Laws of the People's Republic of China, Protective Regulations on Computer Software, Rules on the Enforcement of International Copyright Pact, and Resolution on Punishment of Infringing Copyrights.

On July 10, 1992 and July 30, 1992, the Chinese government acceded to The Berne Convention on Protection over Literary and Artistic Works (Berne Convention) and The International Copyright Convention to the International Intellectual Property Rights Organization and the Educational and Scientific Cultural Organization of the United Nations, respectively. On October 5, 1992 and October 30, 1992, China became a member of the Berne Convention and the International Copyright Convention, respectfully.

On January 4, 1993, the Chinese government adopted The Convention of Tape Recording Products. On April 3, 1993, China became a member of the Tape Recording Products Convention as well.

There were two other major events that demonstrate China's resoluteness on copyright protection. One was the passing of The Resolution of Several Important Issues of Strengthening the Socialist Spiritual Civilization Construction on the sixth plenary session of the fourteenth Central Committee of the Communist Party of China, which was held last year. Its slogan was "to defend legal management and to protect intellectual property rights." The second event was the stipulation of forging copyright as a crime in The Penal Code of the People's Republic of China, passed on the Fifth Session of the Eighth People's Congress, which was held last year. Chapter 3, Part 7, Article 217 of The Penal Code, states:

For profit purposes, one who commits one of the following forms of copyright infringement and who obtains illegally a large sum of money or has other serious offenses, is to be sentenced to under three years of imprisonment or held in custody, and/or be imposed a fine; one who obtains illegally a tremendous amount of money or has other extra-serious offenses is to be sentenced to imprisonment above three years and under seven years and be imposed a fine:

reproduce and distribute books, musical, television and video products, computer software and other products, without the permission of the author;

publish books that are licensed to be published by another publisher;

reproduce and distribute audio and video products, without the permission of their producer;

produce and sell paintings under pseudonym.

Article 218 of The Penal Code states: "for profit purposes, one who sells a replica stated by Article 217 and obtains illegally a large sum of money, is to be sentenced to under three years of imprisonment or held in custody, and/or be imposed a fine."

The inclusion of intellectual property rights (and thus copyright) in the Party's resolutions and in China's important codes, such as The Penal Code, is very significant and indicates the determination of the Chinese government to protect intellectual property rights.

C. The Enforcement of Copyright Protection in China

China not only has a relatively amplified legal system on copyright protection, but also continues to strengthen its enforcement. During recent years, in provinces and big cities where copyright disputes often occur, the People's Courts have set up special trial courts for intellectual property rights. Today, there are nearly twenty provinces and cities that hold such courts. According to statistics,

copyright cases accepted by the People's Courts have been increasing year after year. In the year 1994, the number of copyright cases accepted by courts nationwide was 362, of which 233 were concluded; in 1995, 385 cases were accepted and 366 were concluded; in 1996, 436 were accepted and 436 were concluded. A number of important copyright infringement cases were tried openly, events that seem to have intimidated the criminals. For example, the case of the famous Baodie compact disc company of Suzhou was decided, and its principal person in charge, Bu Xinghua, was sentenced to seventeen years of imprisonment. Recently, the case of Ma Baolin's copyright infringement was decided and its principal criminal was sentenced to five years of imprisonment and further punished with a fine of 50,000 yuan. When it comes to international copyright protection, the People's Court seriously fulfills the international conventions and pacts that China has promised to undertake. For example, twenty-three international record companies, including American Microsoft Company, Walt Disney Company, and Polygram Company of Hong Kong have sued in the People's Courts and won.

THE ADMINISTRATIVE PROTECTION OF COPYRIGHT AND ITS EFFECT IN CHINA

Aside from adopting legal measures under international practices, copyright protection in China has also used administrative power to protect copyright effectively, proceeding from the considerations of national situations. In recent years, the Chinese government has mobilized many sources to crack down illegal abuses of copyright and to strengthen the administrative protection of copyright. The result was evidently marvelous.

A. Administrative Organizations for Copyright Protection

In accordance with the Chinese copyright laws, the country set up the State Copyright Bureau; the provinces, autonomous regions, and municipalities set up copyright administration offices. In the coastal areas that are advanced economically and culturally, including Guangdong, Jiangsu, Shandong, and Liaoning, many cities have also set up copyright administration organizations. According to the copyright laws, the main duties of copyright administration organizations are to defend the legal order of copyright, to settle disputes, to investigate and prosecute copyright infringement cases, and to protect the common interest and the cultural environment of the society.

B. Law Enforcement and Cracking Down on Copyright Crimes

During recent years, in order to crack down on copyright infringement effectively, to maintain the normal order of the publishing market, and to protect the legal rights of the author, the Chinese government has strengthened the administrative protection of copyright and mobilized many sources to crack down on illegal infringement of copyright. For several years successively, the government has combined trans-departmental law forces to act together. Coordinated by the authoritative departments of the Central Committee, a "national leading group for consolidating the newspaper, magazine, audio and video market" was set up jointly by the Ministry of Public Security, the Ministry of Culture, the Ministry of Broadcast, Film and Television, the Office of Journalism, the State Copyright Bureau, the State Industrial and Commercial Bureau, the Head Office of Customs, the Head Office of Civil Aviation, and the Ministry of Finance.

The leading group consists of high-ranking officials from the departments set forth above. An office has been permanently established to guide and coordinate the annual mass actions of cracking down on copyright crimes. Similar leading groups are also being established in all provinces, autonomous regions, and municipalities. Based on a thorough investigation, the annual mass actions focus on definite targets and act around Chinese Spring Festival, a busy season for books and audio and video products. The mass actions taken in 1996 provide an excellent example.

The focal points of the 1996 mass action were underground compact disc factories, major criminal gangs of copyright infringement, places for marketing, and publishing houses involved with copyright infringement. Key provinces such as Guangdong became points of penetration. According to incomplete statistics, during this mass action more than 590,000 man-hours were spent and 6,500,000 pieces of audio and video product, 60,000 discs of computer publication, and 12,350,000 magazines were confiscated. It is worth mentioning that thirty-six underground compact disc production lines were exposed with an annual production ability of 200 million compact discs. In addition, over eighty major illegal publishing places were shut down, 108 provincial cases were brought, and criminal gangs were cracked down on. Nationwide, twenty illegal publication markets were shut down and a number of publishing houses involved in copyright infringement were severely punished. Each year after the mass action, prominent problems in some regions are treated with special care. For example, in June 1997, consolidation of illegal compact discs was

focused on in Beijing.

C. Department Functions and Strengthening of Daily Administration

As trans-departmental law enforcement is being carried out, each department has strengthened its daily routine of copyright administration. A series of laws and regulations that were promulgated demonstrate the enhancement of copyright protection. For example, the State Council promulgated Regulations on Audio and Video Production, Regulations on Publication, and Regulations on Printing, all of which contain respective rules on copyright protection. A series of rules and regulations was also promulgated by the Ministry of Culture, the Ministry of Broadcast, Film and Television, and the Office of Journalism. All of these efforts contribute to the effective protection of copyright. For example, to protect the copyright of audio and video products, measures were taken throughout all steps of publishing, reproduction, and distribution. When the compact disc factory accepts any reproduction business, it is necessary to present a trust deed for reproduction provided by an official publishing house and issued by the administrative department of journalism and publication. The SID sign is to be engraved on all molds in compact disc factories. Supervisors from the administrative departments are assigned to compact disc factories. The publication of foreign books needs an authentication document from the State Copyright Bureau. As for the marketing sector, it is necessary for the distribution unit of audio and video products to present a trust deed for distribution provided by an official publishing house. In addition, an anti-forgery label must be put on the product.

While taking strong measures against copyright infringement, the Chinese government has been actively promoting and encouraging legal productions. If you read Chinese newspapers regularly, you would be familiar with this phrase: "Stress on prosperity and administration at the same time." Prosperity means to encourage legal and excellent publication to dominate the market and administration means to take measures against illegal activities including copyright infringement. The prosperity process also includes promoting normal copyright trade and introducing foreign cultural achievements. Since the enforcement of copyright law, and especially since China joined in the Berne Convention and the International Copyright Convention, copyright trade has continued to expand in China. The number of international copyright trades totaled over 200 in 1993,

and the number keeps rising each year: 1,600 in 1995 and 3,000 in 1996. The international copyright trade in China has demonstrated a good tendency. Many foreign books, films, audio, and video products that have been popular in recent years have been published in China through copyright trade, including, for example, Bill Gates' *The Road Ahead* and Nicholas Negroponte's *Being Digital*. Some Chinese publishing houses have even established stable relationships with American publishers.

However, it should be stressed that copyright trade and the import and export of cultural products must be a two-way street, thus assuring continued communication and cooperation between China and other countries. Compared with the number of copyrights imported from other countries, Chinese copyrights exported abroad are relatively limited. In 1996, China imported over 3,000 items of copyright, while the number of exported items remained only 250. This situation can be enhanced only if the publishing quality in China improves and the cultural products meet the needs of foreign countries. Meanwhile, China will seek support from related countries to export the Chinese copyright products.

Although copyright infringement still exists in China, we have confidence in the future of copyright protection in China. The protection of intellectual property rights will overcome all kinds of difficulties and achieve better results. Our determination is firm, not only because the protection of intellectual property rights is written into the Chinese Penal Code and other laws and regulations, China has joined a series of international copyright conventions, and many of our administrative departments regard the protection of intellectual property rights as their imperative duties; but most importantly, as a country with over 5,000 years of civilized history, China has come to realize that the protection of intellectual property rights is a significant factor that contributes greatly to scientific and technological advancement, to cultural development, to economic prosperity, and to social progress in general. As the protection of intellectual property rights proceeds, the cultural achievements of China and the world will be valued and protected to a better degree.